

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

TERESA B. KELLY,
formerly Teresa B. Keeton,

Plaintiff,

v.

CIVIL ACTION NO. 5:15-cv-08323

COMENITY BANK,

Defendant.

NOTICE OF REMOVAL

TO: Ralph C. Young, Christopher B. Frost, Steven R. Broadwater, Jr., and Jed R. Nolan,
counsel for plaintiff Teresa B. Kelly, formerly Teresa B. Keeton

FROM: W. Blake Belcher and David M. Kersey, counsel for defendant Comenity Bank

Pursuant to 28 U.S.C. § 1446, defendant Comenity Bank hereby gives notice of the above-styled civil action's removal from the Circuit Court of Raleigh County, West Virginia, to the United States District Court for the Southern District of West Virginia, at Beckley, on the following grounds:

1. Comenity Bank has been named as the only defendant in this civil action that was filed on May 19, 2015, and is now pending in the Circuit Court of Raleigh County, West Virginia, designated as Civil Action No. 15-C-407-B.

2. Defendant is informed and therefore believes that at the time this civil action was filed in the Circuit Court of Raleigh County, West Virginia, plaintiff Teresa B. Kelly, formerly Teresa B. Keeton, was and remains a resident of West Virginia.

3. Defendant, at the time this civil action was filed and continuing to the present, is a banking institution organized and existing under the laws of the State of Delaware with its principal place of business in Columbus, Ohio.

4. This action is one of a civil nature of which District Courts of the United States have original jurisdiction, under the provisions of 28 U.S.C.A. § 1132, and is one that may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C.A. § 1441, in that this is a civil action between citizens of different states and because defendant is informed and therefore believes the amount in controversy herein exceeds, exclusive of interest and costs, the sum of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00).

5. The Summons with Complaint attached commencing this civil action in the Circuit Court of Raleigh County, West Virginia, was issued by the Clerk of that Court on May 19, 2015, and served on this defendant through the West Virginia Secretary of State on May 26, 2015; a copy of that Summons and Complaint and the Secretary of State's acknowledgment of service being attached hereto marked jointly as "Exhibit A" along with the attached copy of the official docket sheet covering this civil action from the Circuit Court of Raleigh County, West Virginia, marked as "Exhibit B".

6. This civil action arises out of an alleged breach of a settlement agreement executed by plaintiff to resolve a prior action by plaintiff against defendant.

7. In the Complaint, plaintiff seeks compensatory and punitive damages for fraud, misrepresentation, and deception; damages for slander, defamation, and libel; actual damages for annoyance, aggravation, distress, bother and anxiety for claims arising under the West Virginia Consumer Credit and Protection Act and the Fair Credit Reporting Act; statutory damages for claims arising under the West Virginia Consumer Credit and Protection Act and the Fair Credit Reporting Act; costs and

attorney fees under the West Virginia Consumer Credit and Protection Act and the Fair Credit Reporting Act; and compensatory damages for negligence.

8. During initial settlement negotiations commenced after service of process, counsel for plaintiff made a settlement demand in the amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00), thereby evidencing that the amount in controversy in this civil action is in excess of the jurisdictional amount of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00).

9. Therefore, diversity jurisdiction exists with, and this civil action may be properly removed to, this Court as it arises between citizens of different states and involves an amount in excess of Seventy-Five Thousand and 00/100 Dollars (\$75,000.00).

10. The time in which this civil action can be removed to this Court has not yet expired.

11. Based on the applicable procedural rules and statutes, the proper venue for the removal of this civil action is the United States District Court for the Southern District of West Virginia at Beckley.

12. A payment in the amount of Four Hundred and 00/100 Dollars (\$400.00) covering the standard removal fee will be presented to this Court via a credit card prior to the filing of this notice.

13. A copy of this notice will this day be provided to the Clerk of the Circuit Court of Raleigh County, West Virginia.

WHEREFORE, defendant Comenity Bank respectfully moves that this civil action proceed before this Court as an action properly removed from the Circuit Court of Raleigh County, West Virginia.

DATED: This the 24th day of June, 2015.

COMENITY BANK,

By Counsel.

W. Blake Belcher, Esquire
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/s/ David M. Kersey, Esquire
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CERTIFICATE OF SERVICE

I, David M. Kersey, counsel for Defendant, hereby certify that on the 24th day of June, 2015, I electronically filed the preceding NOTICE OF REMOVAL with the Clerk of this Court using the CM/ECF system, which, in turn, will send notification of such filing to the following CM/ECF participants, Ralph C. Young, Christopher B. Frost, Steven R. Broadwater, Jr., and Jed R. Nolan, plaintiff's counsel:

Ralph C. Young, Esquire
Christopher B. Frost, Esquire
Steven R. Broadwater, Jr., Esquire
Jed R. Nolan, Esquire
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Post Office Box 959
Fayetteville, West Virginia 25840.

/s/ David M. Kersey